

Council of Defense and Space Industries Associations
1000 Wilson Boulevard, Suite 1800
Arlington, VA 22209
www.codsia.org
703-243-2020

July 25, 2005

Defense Acquisition Regulations Council
OUSD(AT&L)/DPAP(DAR), IMD 3C132
3062 Defense Pentagon
Washington, D.C. 20301-3062

Attn: Ms. Robin Schulze

Ref: DFARS Case 2002-D024 Interim Rule: Approval of Service Contracts for Task And Delivery Orders

By email: dfars@osd.mil

CODSIA Case No 02-05

Dear Ms. Schulz:

Introduction

On behalf of the Council of Defense and Space Industries Association (CODSIA), we are pleased to submit comments on the referenced interim rule, published in the Federal Register on May 24, 2005 (70 F.R. 29640, et. seq.). The interim rule amends the DFARS to implement Section 801(b) of the FY 2002 National Defense Authorization Act (NDAA) and Section 854 of the FY 2005 National Defense Authorization Act. Section 801 requires DoD to establish and implement a management structure for the procurement of services. Section 854 requires DoD agencies to comply with certain review and approval requirements before using a non-DoD contract to procure supplies or services in amounts exceeding the simplified acquisition threshold.

Formed in 1964 by the industry associations with common interests in the defense and space fields, CODSIA is currently composed of six associations representing over 4,000 member firms across the nation. Participation in CODSIA projects is strictly voluntary. A decision by any member association to abstain from participating in a particular activity is not necessarily an indication of dissent.

The supplementary information accompanying this interim rule notes that DoD published an interim rule to implement the FY 2002 NDAA on October 1, 2003 (68 FR 56563), receiving comments from seventeen sources. The second interim rule that is the subject of this Federal Register notice contains revisions to that 2003 interim rule plus the implementation of Section 854 of the FY 2005 NDAA and the implementation of an October 29, 2004 policy memo issued jointly by Mr. Wynne, then the acting Under Secretary of Defense (AT&L), and Mr. Henke, the principal deputy Under Secretary of Defense (Comptroller). We appreciate DoD's publication of a second interim rule addressing these matters in an integrated manner.

Subsequent to the publication of this May interim rule, on June 17, 2005, the Director of Defense Procurement and Acquisition Policy issued a memo entitled “Proper Use of Non-DoD Contracts.” The memo reiterates that the use of non-DoD contracts is encouraged when it is the best method of procurement to meet DoD requirements. The Department is continuing to work with GSA and other “assisting agencies” to ensure that all acquisitions made by and on behalf of the Department comply with applicable statutes and regulations. Each of the military departments and the Defense Logistics Agency has also issued supplemental memoranda adopting specific procedures to be used. The Director’s June 17, 2005 memo, and references to the supplemental memoranda, should be specifically addressed in the supplementary information accompanying any revised interim or final rule.

Scope of Rule’s Coverage

As a general matter, we urge the Department to apply the requirements of this interim rule to all task and delivery order contracts awarded by DoD – regardless of whether the supplies or services are acquired through use of a non-DoD contract or task order or acquired through the use of a contract by another defense agency. The requiring activity has a responsibility for ensuring that the factors specified in Subpart 217.7802 are complied with and in the best interest of the Department. DoD could use this same DFARS structure to extend implementation of the current statutory requirements to all DoD contracting vehicles. DoD has already expanded the scope of coverage of this interim rule to include “supplies,” not just “services” as provided for by Section 801 of the FY 2002 NDAA Act, although Section 854 applies to both “goods” and “services”. In fact, Congress is currently considering a proposal to extend these procedures to internal DoD awards, as well.

Subpart 207.105 - Contents of Written Acquisition Plans

The interim rule amends Subpart 207.105 by adding a new paragraph (b)(4) to address the contents of written acquisition plans. While we support the new provision, it would be stronger by adding before the period at the end of the sentence the phrase “including the review and approval requirements of Subpart 217.78”.

Subpart 217.78 – Special Contracting Methods

The core of the interim rule is the addition of a new DFARS Subpart 217.78 entitled “Contracts or Delivery Orders Issued by a Non-DoD Agency”. The policy prescription is taken verbatim from the October 29, 2004 Wynne/Henke memo; while the text operates more as guidance to the Department than regulations affecting contractors, we support its continuation in the interim rule. However, the interim rule does not yet have accompanying “Policies, Guidance and Instructions” (PGI) linked to this Subpart; we encourage the Department to promptly create that PGI, particularly for the data collection elements required by subparagraph (e).

Application Thresholds

Section 854 applies only to acquisitions using non-DoD contracts for amounts over the simplified acquisition threshold. We support providing the flexibility for defense agencies to apply their own additional internal procedures appropriate to the dollar value and nature of the contract.

Removing Former DFARS 237.170-2

We strongly support removing former Subpart 237.170-2. We concur with the department's commentary in the supplementary information accompanying this interim rule that this DFARS provision was confusing and is unnecessary to implement these or any other department requirements.

Conclusion

We support the provision in this interim rule that implements Section 854 of the FY 2005 NDAA and make suggestions for improvements in the coverage. We also encourage DoD to expand the coverage of these policies and procedures to all task and delivery order contracts for supplies and services, whether made under a contract with a non-DoD activity or made under a contract with another DoD agency.

Thank you for your attention to these comments. If you have any questions or need any additional information, please contact Alan Chvotkin of the Professional Services Council, who serves as our point of contact for this matter. Alan can be reached at (703) 875-8059 or at Chvotkin@pscouncil.org.

Sincerely,



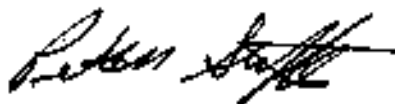
Alan Chvotkin
Senior Vice President and Counsel
Professional Services Council



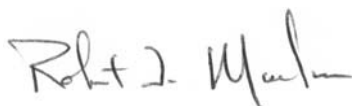
Dan Heinemeier
President
GEIA
Electronics Industries Alliance



Chris Jahn
President
Contract Services Association



Peter Stoff
Vice President, Government Policy
National Defense Industries
Association



Robert J. Menden
Vice President
Aerospace Industries Association



Cynthia Brown
President
American Shipbuilders Association